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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

) Case No.	
ABANTE ROOTER AND PLUMBING)		
INC and SIDNEY NAIMAN,	) <u>CLASS ACTION</u>	
individually and on behalf of all others)		
similarly situated,	) COMPLAINT FOR VIOLATIONS	
	) OF:	
Plaintiff,)	
	)	1. NEGLIGENT VIOLATIONS
vs.	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(b)]
ALARM.COM INCORPORATED dba )	)	2. WILLFUL VIOLATIONS
ICN ACQUISITION; GHS )	)	OF THE TELEPHONE
INTERACTIVE SECURITY, LLC; and )	)	CONSUMER PROTECTION
DOES 1 through 10, inclusive, and each )	)	ACT [47 U.S.C. §227(b)]
of them,	)	3. NEGLIGENT VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(c)]
Defendant.	)	4. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(c)]

DEMAND FOR JURY TRIAL

1 Plaintiffs ABANTE ROOTER AND PLUMBING INC and SIDNEY
2 NAIMAN (“Plaintiffs”), individually and on behalf of all others similarly situated,
3 alleges the following upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiffs bring this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of ALARM.COM INCORPORATED
8 dba ICN ACQUISITION and GHS INTERACTIVE SECURITY, LLC,
9 (“Defendants”), in negligently, knowingly, and/or willfully contacting Plaintiffs on
10 Plaintiffs’ cellular telephones in violation of the Telephone Consumer Protection
11 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the
12 National Do-Not-Call provisions, thereby invading Plaintiffs’ privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under 28 U.S.C. § 1331 because this action
15 arises under a Federal Question, namely the Telephone Consumer Protection Act,
16 47 U.S.C. § 227, *et seq.* Plaintiffs also seek up to \$1,500.00 in damages for each
17 call in violation of the TCPA, which, when aggregated among a proposed class in
18 the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
19 Therefore, both federal question jurisdiction and the damages threshold under the
20 Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has
21 jurisdiction.

22 3. Venue is proper in the United States District Court for the Northern
23 District of California pursuant to 28 U.S.C. 1391(b) and because Defendant does
24 business within the State of California and Plaintiffs reside within the Counties of
25 Alameda and Contra Costa.

26 **PARTIES**

27 4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff
28 ABANTE”), is a corporation of the State of California, whose principal place of

1 business is in the county of Alameda and is a “person” as defined by 47 U.S.C. §
2 153 (39).

3 5. Plaintiff, SIDNEY NAIMAN (“Plaintiff NAIMAN”), is a natural
4 person residing in Contra Costa County, California and is a “person” as defined by
5 47 U.S.C. § 153 (39).

6 6. Defendant, ALARM.COM INCORPORATED dba ICN
7 ACQUISITION (“Defendant ALARM.COM”) is a technology company that
8 provides services for home monitoring and security, and is a “person” as defined
9 by 47 U.S.C. § 153 (39).

10 7. Defendant, GHS INTERACTIVE SECURITY, LLC (“Defendant
11 GHS”) is a home security company, and is a “person” as defined by 47 U.S.C. §
12 153 (39).

13 8. The above named Defendants, and its subsidiaries and agents, are
14 collectively referred to as “Defendants.” The true names and capacities of the
15 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
16 currently unknown to Plaintiffs, who therefore sue such Defendants by fictitious
17 names. Each of the Defendants designated herein as a DOE is legally responsible
18 for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend
19 the Complaint to reflect the true names and capacities of the DOE Defendants when
20 such identities become known.

21 9. Plaintiffs are informed and believe that at all relevant times, each and
22 every Defendant was acting as an agent and/or employee of each of the other
23 Defendants and was acting within the course and scope of said agency and/or
24 employment with the full knowledge and consent of each of the other Defendants.
25 Plaintiffs are informed and believe that each of the acts and/or omissions
26 complained of herein was made known to, and ratified by, each of the other
27 Defendants.

FACTUAL ALLEGATIONS

10. Beginning in or around October 2017, Defendants contacted Plaintiffs on Plaintiffs' cellular telephone numbers ending in -7210, -1080, -6147, and -6443 in an attempt to solicit Plaintiffs to purchase Defendants' services.

11. Defendants used an "automatic telephone dialing system" as defined by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiffs seeking to solicit its services.

12. Defendants contacted or attempted to contact Plaintiffs from telephone numbers confirmed to be Defendants', including but not limited to: (304) 994-8702, (480) 889-1116, (510) 430-1348, (215) 994-8702, and (614) 830-9311.

13. When Plaintiffs would answer Defendants' calls, a pre-recorded message would play, prompting Plaintiffs to press "1" in order to speak to an operator.

14. Defendants' calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

15. During all relevant times, Defendants did not possess Plaintiffs' "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on their cellular telephones pursuant to 47 U.S.C. § 227(b)(1)(A).

16. Further, Plaintiffs' cellular telephone numbers ending in -7210, -1080, -6147, and -6443 were added to the National Do-Not-Call Registry on or about July 12, 2018, November 12, 2014, July 12, 2018, and April 11, 2004, respectively.

17. Defendants placed multiple calls soliciting its business to Plaintiffs on their cellular telephones ending in in -7210, -1080, -6147, and -6443 in or around April 2019 and continuing through November 2019.

18. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendants' services.

19. Plaintiffs received numerous solicitation calls from Defendants within a 12-month period.

20. Defendant to call Plaintiffs in an attempt to solicit its services and in violation of the National Do-Not-Call provisions of the TCPA for their telephone numbers ending in -7210, -1080, -6147, and -6443

21. Upon information and belief, and based on Plaintiffs' experiences of being called by Defendant after requesting they stop calling, and at all relevant times, Defendant failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

22. Plaintiffs bring this action individually and on behalf of all others similarly situated, as a member the two proposed classes (hereafter, jointly, "The Classes"). The class concerning the ATDS claim for no prior express consent (hereafter "The ATDS Class") is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendants to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

23. The class concerning the National Do-Not-Call violation (hereafter "The DNC Class") is defined as follows:

All persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who had not granted Defendant prior express consent nor had a prior established business relationship, who received more than one call made by or on behalf of Defendant that promoted Defendant's products or services, within any twelve-month period, within four years prior to the

1 filing of the complaint.

2 24. Plaintiffs represent, and are members of, The ATDS Class, consisting
3 of all persons within the United States who received any solicitation telephone calls
4 from Defendants to said person's cellular telephone made through the use of any
5 automatic telephone dialing system or an artificial or prerecorded voice and such
6 person had not previously not provided their cellular telephone number to
7 Defendants within the four years prior to the filing of this Complaint.

8 25. Plaintiffs represent, and are members of, The DNC Class, consisting
9 of all persons within the United States registered on the National Do-Not-Call
10 Registry for at least 30 days, who had not granted Defendants prior express consent
11 nor had a prior established business relationship, who received more than one call
12 made by or on behalf of Defendants that promoted Defendants' products or
13 services, within any twelve-month period, within four years prior to the filing of
14 the complaint.

15 26. Defendants, its employees and agents are excluded from The Classes.
16 Plaintiffs do not know the number of members in The Classes, but believe the
17 Classes' members number in the thousands, if not more. Thus, this matter should
18 be certified as a Class Action to assist in the expeditious litigation of the matter.

19 27. The Classes are so numerous that the individual joinder of all of its
20 members is impractical. While the exact number and identities of The Classes
21 members are unknown to Plaintiffs at this time and can only be ascertained through
22 appropriate discovery, Plaintiffs are informed and believes and thereon alleges that
23 The Classes includes thousands of members. Plaintiffs allege that The Classes
24 members may be ascertained by the records maintained by Defendants.

25 28. Plaintiffs and members of The ATDS Class were harmed by the acts
26 of Defendants in at least the following ways: Defendants illegally contacted
27 Plaintiffs and ATDS Class members via their cellular telephones thereby causing
28

1 Plaintiffs and ATDS Class members to incur certain charges or reduced telephone
 2 time for which Plaintiffs and ATDS Class members had previously paid by having
 3 to retrieve or administer messages left by Defendants during those illegal calls, and
 4 invading the privacy of said Plaintiffs and ATDS Class members.

5 29. Common questions of fact and law exist as to all members of The
 6 ATDS Class which predominate over any questions affecting only individual
 7 members of The ATDS Class. These common legal and factual questions, which
 8 do not vary between ATDS Class members, and which may be determined without
 9 reference to the individual circumstances of any ATDS Class members, include,
 10 but are not limited to, the following:

- 11 a. Whether, within the four years prior to the filing of this
 12 Complaint, Defendants made any telemarketing/solicitation
 13 call (other than a call made for emergency purposes or made
 14 with the prior express consent of the called party) to a ATDS
 15 Class member using any automatic telephone dialing system or
 16 any artificial or prerecorded voice to any telephone number
 17 assigned to a cellular telephone service;
- 18 b. Whether Plaintiffs and the ATDS Class members were
 19 damaged thereby, and the extent of damages for such violation;
 20 and
- 21 c. Whether Defendants should be enjoined from engaging in such
 22 conduct in the future.

23 30. As persons that received numerous telemarketing/solicitation calls
 24 from Defendants using an automatic telephone dialing system or an artificial or
 25 prerecorded voice, without Plaintiffs' prior express consent, Plaintiffs are asserting
 26 claims that are typical of The ATDS Class.

27 31. Plaintiffs and members of The DNC Class were harmed by the acts of
 28 Defendants in at least the following ways: Defendants illegally contacted Plaintiff

1 and DNC Class members via their telephones for solicitation purposes, thereby
2 invading the privacy of said Plaintiff and the DNC Class members whose telephone
3 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
4 members were damaged thereby.

5 32. Common questions of fact and law exist as to all members of The
6 DNC Class which predominate over any questions affecting only individual
7 members of The DNC Class. These common legal and factual questions, which do
8 not vary between DNC Class members, and which may be determined without
9 reference to the individual circumstances of any DNC Class members, include, but
10 are not limited to, the following:

- 11 a. Whether, within the four years prior to the filing of this
12 Complaint, Defendants or its agents placed more than one
13 solicitation call to the members of the DNC Class whose
14 telephone numbers were on the National Do-Not-Call Registry
15 and who had not granted prior express consent to Defendant and
16 did not have an established business relationship with
17 Defendants;
- 18 b. Whether Defendants obtained prior express written consent to
19 place solicitation calls to Plaintiffs or the DNC Class members'
20 telephones;
- 21 c. Whether Plaintiffs and the DNC Class member were damaged
22 thereby, and the extent of damages for such violation; and
- 23 d. Whether Defendants and its agents should be enjoined from
24 engaging in such conduct in the future.

25 33. As persons that received numerous solicitation calls from Defendants
26 within a 12-month period, who had not granted Defendants prior express consent
27 and did not have an established business relationship with Defendants, Plaintiffs
28 are asserting claims that are typical of the DNC Class.

1 34. Plaintiffs will fairly and adequately protect the interests of the
2 members of The Classes. Plaintiffs have retained attorneys experienced in the
3 prosecution of class actions.

4 35. A class action is superior to other available methods of fair and
5 efficient adjudication of this controversy, since individual litigation of the claims
6 of all Classes members is impracticable. Even if every Classes member could
7 afford individual litigation, the court system could not. It would be unduly
8 burdensome to the courts in which individual litigation of numerous issues would
9 proceed. Individualized litigation would also present the potential for varying,
10 inconsistent, or contradictory judgments and would magnify the delay and expense
11 to all parties and to the court system resulting from multiple trials of the same
12 complex factual issues. By contrast, the conduct of this action as a class action
13 presents fewer management difficulties, conserves the resources of the parties and
14 of the court system, and protects the rights of each Classes member.

15 36. The prosecution of separate actions by individual Classes members
16 would create a risk of adjudications with respect to them that would, as a practical
17 matter, be dispositive of the interests of the other Classes members not parties to
18 such adjudications or that would substantially impair or impede the ability of such
19 non-party Class members to protect their interests.

20 37. Defendants have acted or refused to act in respects generally
21 applicable to The Classes, thereby making appropriate final and injunctive relief
22 with regard to the members of the Classes as a whole.

23 **FIRST CAUSE OF ACTION**

24 **Negligent Violations of the Telephone Consumer Protection Act**

25 **47 U.S.C. §227(b).**

26 **On Behalf of the ATDS Class**

27 38. Plaintiffs repeat and incorporate by reference into this cause of action
28 the allegations set forth above at Paragraphs 1-37.

39. The foregoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

40. As a result of Defendants' negligent violations of *47 U.S.C. § 227(b)*, Plaintiffs and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

41. Plaintiffs and the ATDS Class and ATDS Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class

42. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-41.

43. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

44. As a result of Defendants' knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiffs and the ATDS Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

45. Plaintiffs and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class

46. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-45.

47. The foregoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

48. As a result of Defendants' negligent violations of *47 U.S.C. § 227(c)*, Plaintiffs and the DNC Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

49. Plaintiffs and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class

50. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-49.

51. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

52. As a result of Defendants' knowing and/or willful violations of *47*

1 *U.S.C. § 227(c)*, Plaintiffs and the DNC Class members are entitled an award of
2 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
3 *§ 227(c)(5)*.

4 53. Plaintiffs and the DNC Class members are also entitled to and seek
5 injunctive relief prohibiting such conduct in the future.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs request judgment against Defendants for the following:
8

9 **FIRST CAUSE OF ACTION**

10 **Negligent Violations of the Telephone Consumer Protection Act**

11 **47 U.S.C. §227(b)**

- 12 • As a result of Defendants' negligent violations of *47 U.S.C.*
13 *§227(b)(1)*, Plaintiffs and the ATDS Class members are entitled to
14 and request \$500 in statutory damages, for each and every violation,
15 pursuant to *47 U.S.C. 227(b)(3)(B)*.
16 • Any and all other relief that the Court deems just and proper.
17

18 **SECOND CAUSE OF ACTION**

19 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
20 **Act**

21 **47 U.S.C. §227(b)**

- 22 • As a result of Defendants' willful and/or knowing violations of *47*
23 *U.S.C. §227(b)(1)*, Plaintiffs and the ATDS Class members are
24 entitled to and request treble damages, as provided by statute, up to
25 \$1,500, for each and every violation, pursuant to *47 U.S.C.*
26 *§227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*.
27 • Any and all other relief that the Court deems just and proper.
28

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THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendants' negligent violations of 47 U.S.C. §227(c)(5), Plaintiffs and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendants' willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiffs and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

54. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demands, a trial by jury.

Respectfully Submitted this 29th Day of July, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff